IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2002

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Writ Petition No.15407 of 2002

1. Mohammed Ansari
2. Jakeer Hussein
3. Samsudeen
4. Mossa
5. Tada Bhukari
6. Aslaam
7. Abdul Salam
8. Mohammed Alikhan
9. Yusuf Kutty .. Petitioners

-Vs-

1. The Secretary to the Government
of Tamilnadu,
Department of Home Affairs,
Fort St. George,
Chennai-9.

2. The Superintendent,
Coimbatore Central Prison,
Coimbatore.

3. The Inspector General of Police,
Special Investigation Team,
CB CID,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

For petitioners : Mr.Sankarasubbu for
Mr.N.S.Ziauddeen

For respondents : Mr.R.Muthukumarasamy,
Addl. Advocate General for
Mr.D.Krishnakumar, Special GP.

:O R D E R

Mr.R.Muthukumarasamy, learned Additional Advocate General for Mr.D.Krishnakumar, Special Government Pleader, take notice for the respondents.

2. Writ Petition praying to issue a Writ of Certiorari calling for the records pertaining to G.O. Ms.No.261 dated 21.3.2002 and G.O. Ms. No.292 dated 3.4.2002 on the file of the first respondent and quash the same.

3. The averments of the writ petition are that the petitioners have been arrested by the police in connection with the bomb blast that had occurred on 14.2.1998 in and around the city of Coimbatore; that the cases relating to the bomb blast have been clubbed together by the third respondent and investigation was carried out by them; that in the year 2000, the third respondent filed the charge sheet and the case was numbered as Sessions Case No.2 of 2000 in the Special Court for Bomb Blast Cases at Coimbatore; that after a delay of 4 years, trial in S.C. No.2 of 2000 had commended on 7.3.2002 and the examination of the prosecution witnesses is going on now; that till the month of February 2002, the petitioners have been regularly produced in various courts in which they are facing trials; that after the escape of one of the under trials in Madurai, the second respondent herein started restricting their movements by not producing them before the various courts in which they are facing trials.

4. While so, the first respondent Government have issued two Government orders, which are impugned herein, thereby restricting the 158 under trial prisoners from attending the Courts in which they are facing trials; that the said G.Os. have been passed on the basis of Section 268 Cr.P.C.; that the above G.Os. have been passed by the first respondent with an ulterior motive to obstruct the progress of S.C. No.2 of 2000 pending on the file of the Special Court, Coimbatore. On these grounds, the petitioners would pray for the relief extracted supra.

5. Heard the learned counsel for both and perused the materials placed on record.

6. During arguments, the learned counsel appearing on behalf of the petitioners would cite a judgment of the Apex Court delivered in Bhajan Vir Singh VS. State of Haryana reported in 1991 Cri. L.J. 1311, wherein, the Apex court, following the earlier judgment delivered by it and reported in AIR 1978 SC 851, has held that,

"the provisions of Section 268 of the Cr.P.C. Conferring power on the State Government to exclude attendance of prisoner in court are exceptional in nature as ordinarily the accused are produced before the concerned courts on the relevant dates. These provisions had to be construed strictly."
"A glance through the provisions of sub-s.(2) of this section leaves absolutely no doubt that before making an order under sub-sec.(1), the State Government shall have regard to the nature of the offence for which, or the

grounds on which, the persons or class of persons has been ordered to be confined or detained in prison; the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and the public interest, generally. Thus there is no doubt that the State Government has to apply its mind to all these factors before passing any order u/s.268 of the Cr.P.C. The law is well settled that in such like cases, the application of mind to the facts of the case should be apparent from the very reading of the impugned order or in other words, it can be well said that in such like cases, the impugned order should be selfcontained and speaking one."

7. Citing the above judgment, the learned counsel would exhort that there is absolutely neither application of mind nor could the orders of the Government impugned herein be termed as speaking orders as warranted by the Apex Court, and therefore, would request this Court to order granting the relief as prayed for.

8. On the other hand, citing a recent judgment delivered by a learned single Judge of this Court dated 7.3.2002 made in W.P. No.7384 of 2002, wherein the G.O.Ms.No.261 dated 21.3.2001 and G.O. Ms.No.301 dated 28.3.2001 passed by the Government of Tamil Nadu have been challenged by one Maran @ Senguttuvan, and the learned Judge, adhering the facts and circumstances encircling those orders impugned, has remarked that those impugned orders inasmuch as the Government have considered the relevant matters in terms of Section 268 (2) Cr.P.C., cannot be attacked either on ground of discriminatory or for want of jurisdiction, thus ultimately dismissing the writ petition. On these grounds, the learned Additional Advocate General would pray to dismiss the writ petition.

9. In the above circumstances, the only point that arises before this Court for determination is, whether the impugned Government Orders have been passed by the first respondent Government legally and in accordance with Section 268 Cr.P.C. and the legal propositions held by the Apex Court?

10. Section 268 Cr.P.C. would empower the State Government to pass such orders as against Section 267 Cr.P.C. granting power to require attendance of prisoners under Section 268(1) Cr.P.C. But, before making an order under Section 268(1) Cr.P.C., the State Government shall have regard to the three ingredients, as specified under Section 26 8(2) Cr.P.C., viz., (a) the nature of the offence, (ii) the likelihood of the disturbance and (iii) the public interest, generally.

11. The Apex Court has very clearly held as extracted herebefore that the law is well settled that in such like cases, the application of mind to the facts of the case should be apparent from the very reading of the impugned order or in other words, it can be well said that in such like cases, the impugned order should be self-contained and speaking one.

12. In fact, a cursory glance made into the orders impugned would

show that only the three clauses forming part of Section 268(2) Cr.P. C. had been extracted as clauses (a), (b) and (c), i.e. regarding the nature of the offence, likelihood of the disturbance and the public interest, but absolutely bereft of any reason assigned much less in a tangible and speaking manner as to what is the nature of the offence, what is the likelihood of the disturbance and the public interest involved in the cases in hand so as to invoke the provisions of law under Section 268(2) Cr.P.C. much less against the power to require the attendance of the prisoners under Section 267 Cr.P.C.

13. In the above circumstances, this Court is left with no option but to quash the impugned Government Orders allowing the writ petition.

In result, the above writ petition succeeds and the same is allowed. The G.O. Ms.No.261 dated 21.3.2002 and G.O. Ms.No.292 dated 3.4.2002 respectively are quashed.
However, the first respondent, Government, will be at liberty to pass orders regarding the subject matter in a considered manner.
Consequently, WPMP Nos.20662 and 20663 of 2002 are closed. No costs.

V.KANAGARAJ, J.

To
1. The Secretary to the Government of Tamilnadu,
Department of Home Affairs,
Fort St. George, Chennai-9.

2. The Superintendent,
Coimbatore Central Prison, Coimbatore.

3. The Inspector General of Police,
Special Investigation Team,
CB CID, Chennai.

Order in
W.P. No.15407 of 2002